

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOWARD EALY,

1:02-CV-5897 AWI WMW P

Plaintiff,

vs.

ORDER DIRECTING SERVICE
BY THE UNITED STATES MARSHAL
WITHOUT PREPAYMENT OF COSTS

DR. ZOLLER, et al.,

Defendants.

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. The court previously ordered plaintiff to provide information for service of process on form USM-285, sufficient copies of the complaint for service, and a notice of compliance. Plaintiff has filed the required papers. Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to forward the following documents to the United States Marshal:

- (1) One completed and issued summons for each defendant to be served;
- (2) One completed USM-285 form for each defendant to be served;
- (3) One copy of the third-amended complaint filed on February 18, 2005 for each defendant to be served, plus an extra copy for the

1 Marshal;

2 (4) One copy of this order for each defendant to be served, plus an
3 extra copy for the Marshal;

4 (5) One copy of the court's consent form for each defendant to be
5 served.

6 2. Within ten days from the date of this order, the United States Marshal is
7 directed to notify the following defendants of the commencement of this action and to request a
8 waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C.
9 § 566(c):

10 DR. ZOLLER

11 DR. RHODES

12 DR. KIM

13 MTA SINCLAIR

14 3. The U.S. Marshal is directed to retain the summons and a copy of the
15 complaint in their file for future use.

16 4. The United States Marshal shall file returned waivers of service as well as any
17 requests for waivers of service that are returned as undelivered as soon as they are received.

18 5. If a waiver of service is not returned by a defendant within sixty days of the
19 date of mailing the request for waiver, the United States Marshal shall:

20 a. Personally serve process and a copy of this order upon the defendant
21 pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C.
22 § 566(c) and shall command all necessary assistance from the California
23 Department of Corrections (CDC) to execute this order. The United States
24 Marshal shall maintain the confidentiality of all information provided by
25 the CDC pursuant to this order.
26

1 b. Within ten days after personal service is effected, the United States
2 Marshal shall file the return of service for the defendant, along with
3 evidence of any attempts to secure a waiver of service of process and of
4 the costs subsequently incurred in effecting service on said defendant.
5 Said costs shall be enumerated on the USM-285 form and shall include the
6 costs incurred by the Marshal's office for photocopying additional copies
7 of the summons and complaint and for preparing new USM-285 forms, if
8 required. Costs of service will be taxed against the personally served
9 defendant in accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

10 6. In the event that defendants make an appearance in this action by filing an
11 answer, dispositive motion, or other pleading, the U.S. Marshals Service need not personally
12 serve those defendants.

13 7. In the event that defendants either waive service or are personally served,
14 defendants are required to reply to the complaint. 42 U.S.C. §1997e(g)(2).

15 IT IS SO ORDERED.

16 **Dated: October 6, 2005**
j14hj0

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE